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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

IN RE:
ARETA J. WENTZ
1117 N. MAPLE STREET

EATON OH

45320-0000

: CASE NO: 07-34235
: (Chapter 13)
: JUDGE GUY R. HUMPHREY
:
:
:

**CHAPTER 13 TRUSTEE'S OBJECTION TO CONFIRMATION,
REQUEST FOR DENIAL OF CONFIRMATION**

The Chapter 13 Trustee recommends that the plan not be confirmed, all as more fully set forth in the attached memorandum. A plan has not been confirmed.

Hearing Date December 11, 2007 at 1:30 P.M.

☐ West ☒ East Courtroom, 120 W Third Street, Dayton, OH

The confirmation hearing will be held as scheduled. At the hearing, confirmation may be granted or denied. The debtor and debtor's counsel are expected to attend the the confirmation hearing.

CASE MEMO:

Case Commenced: September 27, 2007

Prior Case(s) ☒ no ☐ yes

Plan Filed: September 27, 2007

Debtor ☒ Single ☐ Married

Monthly Plan Payment: \$1,300.00

Size of Household 1 persons

Step Plan ☐ yes

Gross Income (Month) \$3,559.00

Plan Length 36.00 (months)

Sch. J Expenses \$2,159.00

Unsecured Percent 8 %

(Less rent/mortgage, domestic support, taxes)

Mortgages(s) ☒ yes ☐ no

Who Disburses Mortgage(s) ☐ Trustee ☐ Debtor ☐ Both

Other: TREATING BOTH MORTGAGES UNSECURED DUE TO IRREGULARITIES IN MORTGAGES.

MEMORANDUM

CHAPTER 13 TRUSTEE'S NOTED DEFICIENCIES in PLAN and/or CASE AND GROUNDS FOR OBJECTION TO CONFIRMATION

The Plan does not comply with:

☐ 11 U.S.C. § 1322(d) - Plan calculation exceeds 5 years

Reason: _____

☐ 11 U.S.C. § 1325(b)(1)(B) (See: Schedules I and J)

☐ Totality of budget

☐ Deductions for pension plan loan (See: *In re Harshbarger*, 66 F.3d 775 (6th Cir.1995))

☐ The debtor has failed to submit all projected disposable income to be received in the three year period beginning on the date that the first payment is due under the plan [11 U.S.C. § 1325(b)], to wit: 401(k) deduction.

☐ Projected income from _____
is not submitted to the plan (See: *In re Freeman*, 86 F.3d 478 (6th Cir. 1996);

In re Koch 109 F.3d 1285 (8th Cir. 1997); *In re Claude*, 206 B.R. 374 (Bkrtcy.W.D.Pa 1997))

☐ The debtor has failed to submit all projected disposable income to be received in the three year period beginning on the date that the first payment is due under the plan [11 U.S.C. § 1325(b)], to wit: _____

☒ 11 U.S.C. § 1325(a)(4)

☒ 11 U.S.C. § 1322(a)(2) as to taxes ☒ other

☐ 11 U.S.C. § 1322(a)(3) - Discriminates with respect to _____

☐ 11 U.S.C. § 1322(b)(1) - Discriminates with respect to _____

☐ 11 U.S.C. § 1325(a)(6) - (Plan speculative - No evidence of ability to make all payments under the plan)

☐ 11 U.S.C. § 1325(a)(6) - Debtor has failed to file federal tax returns for tax years _____
thus placing the plan's feasibility into question.

☒ 11 U.S.C. § 1325(a)(3) - Plan not proposed in good faith

The Plan

- ☐ provides for payment on more than one vehicle per working debtor
- ☐ proposes debtor disburse of mortgage with trustee disburse of arrearage
- ☐ Fails to designate time and/or details for sale of real estate

See: *In re Hogue* 78 B.R. 867 (Bkcy.S.D.OhioE.D. 1987);

In re Erickson, 176 B.R. 753 (Bkcy.E.D.Pa 1995)

☒ No appraisal of real estate (LBR 3015-3(e)(3))

☐ Other:

THE TRUSTEE CANNOT DETERMINE BEST INTEREST WITHOUT AN APPRAISAL. IF THE MORTGAGES ARE TRULY UNSECURED AS PROPOSED BY THE DEBTOR THEN THE DEBTOR MUST PAY AT LEAST \$40,000 TO UNSECURED CREDITORS. DEBTOR ALSO NEEDS TO FILE AMENDED MEANS TEST FORM B22C AND SCHEDULES I AND J TO FULLY DISCLOSE ALL HOUSEHOLD MEMEBERS AND ALL INCOME-THE MEANS TEST SHOWS FIVE PEOPLE IN THE HOUSEHOLD, YET SCHEDULE I ONLY SHOWS ONE PERSON-DAUGHTER WAS PAYING THE MORTGAGE AND IS ON DISABILITY BUT CONTRIBUTES TO THE HOUSEHOLD. ALL INFORMATION IS INACCURATE SO THE TRUSTEE CANNOT DETERMINE IF MEANS TEST IS MET. THE PLAN IS NOT PROPOSED IN GOOD FAITH.

/s/ Jeffrey M. Kellner
Jeffrey M. Kellner 0022205
Chapter 13 Trustee
131 N. Ludlow Street, Suite 900
Dayton, Ohio 45402
(937) 222-7600 Fax (937)222-7383
email: chapter13@dayton13.com

Certificate of Service

07-34235

I hereby certify that a copy of the attached was served by electronic service or was mailed by first class mail to each of the following on the date of the electronic filing.

ARETA J. WENTZ	1117 N. MAPLE STREET EATON OH	45320-0000
LESTER R THOMPSON	1340 WOODMAN DR DAYTON OH	45432-0000
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OFFICE OF THE U S TRUSTEE SUITE 200	170 NORTH HIGH ST COLUMBUS OH	43215-0000

Jeffrey M. Kellner BY _/s/ Jeffrey M. Kellner_

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